

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment by)	WT Docket No. 13-238
Improving Wireless Facilities Siting Policies)	
)	
Acceleration of Broadband Deployment:)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	
)	
Amendment of Parts 1 and 17 of the)	RM-11688 (terminated)
Commission's Rules Regarding Public)	
Notice Procedures for Processing Antenna)	
Structure Registration Applications for)	
Certain Temporary Towers)	
)	
2012 Biennial Review of)	WT Docket No. 13-32
Telecommunications Regulations)	

COMMENTS OF CORNELIUS, OREGON

The City of Cornelius, Oregon appreciates the opportunity to respond to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking ("Draft Rules"), released on September 26, 2013, in the above-entitled proceeding.

INTRODUCTION

The City of Cornelius, located 26 miles west of Portland and 10 miles east of the Coast Range, is a small but thriving city with a population just under 12,000, known as "Oregon's Family Town." Cornelius is situated in the fertile Tualatin River Valley. It is an agricultural

paradise, where rolling hillsides, vineyards and farms abound. Cornelius is also home to world-class wineries and one of the oldest golf courses in the Pacific Northwest.

For nearly twenty years the City has been planning and implementing improvements in the core areas of Cornelius through the Main Street District Plan. The Plan is the result of years of effort by the City and concerned citizens and businesses to revitalize this significant area of Cornelius. The Plan provides a framework for enhancement, improvement and redevelopment of the core business area of the City, with urban identity oriented toward pedestrian friendly streetscapes that incorporate existing historical structures. Today, this distinctly local effort is paying off, with wide sidewalks and beautiful new street lights along a portion of the downtown core. This achievement is significant, as twenty-two percent of the population of Cornelius is disabled and truly benefits from the careful planning and design reflected in the Plan.

Given the unique issues faced by the City of Cornelius, the City has significant concerns about two aspects of the Draft Rules in particular: the Commission's proposed interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409(a)") and the consideration of changes to the Commission's interpretations of Section 332(c)(7) in the *2009 Declaratory Ruling* ("Shot Clock Rule").

IMPLEMENTATION OF SECTION 6409(a)

Under Section 6409(a), city permitting authorities "may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Congress did not define the terms "wireless tower," "base station," or "substantially change the physical dimensions." In the Draft Rules, the Commission seeks comment on: (1) whether or not to adopt rules defining those terms, and (2) proposed definitions for those terms. The City's experience

does not support the need to define these terms at this time, and certainly not in the overly restrictive, one-size-fits-all manner proposed in the Draft Rules.

The City's process for review of collocation applications has effectively managed the five collocation applications it has received in the last five years, each of which required an administrative design review process with no public hearing or notice to other property owners. No applicant has complained about the City's collocation approval process or, to the City's knowledge, abandoned a collocation plan due to its collocation application review process.

In short, the City has a process that works. Yet several of the proposed definitions in the Draft Rules would enable an end run around the City's very reasonable land use requirements and prevent the City from fulfilling its obligation to protect the health, safety and welfare of its citizens. For example, the proposed test to define the phrase "substantially change the physical dimensions" results in rigid percentages or numerical rules that do not take into account the characteristics of the existing structure and neighborhood or the applicable land use requirements and decisions. A collocation that increases an existing facility by up to twenty feet or ten percent could have a very significant, negative impact in a residential neighborhood that may not be true of a similar collocation in an industrial zone. Similarly, in some instances, the Draft Rules could allow equipment that protrudes into the pedestrian areas, causing significant issues for the handicapped population in the City. The City's zoning laws and review process can address these unique circumstances, whereas the Draft Rules do not. The Draft Rules substitute the Commission's judgment for the City's when it comes to necessarily local land use matters.

Further, the Draft Rules do not take into consideration any conditions placed on the approval of the original tower or base station. The City's zoning authority would be gutted entirely if the Draft Rules disregard the important safety and aesthetic conditions the City

imposed on the original structure as necessary to preserve the safety and quality of its neighborhoods. This concern is exacerbated to the extent the new rules apply the “substantially change” test based on the structure as altered by subsequent collocations rather than based on the original structure. Hamstringing cities in this way seems likely to lead to significant issues with the approval process of new “towers or base stations” as residents and local officials realize that the tower or base station described in the original application could grow exponentially over time without local authority to ensure it remains safe and compliant with local zoning and land use regulations.

The City is also concerned about the prospect of interpreting the phrase “must approve” in Section 6409(a) to preempt any conditions on the approval of a collocation. Currently, the City requires appropriate screening or stealth structures and may impose conditions primarily related to compliance with the original approval of the tower, any needed building or electrical permits and documentation that new antennas do not interfere with emergency communications. In some cases, there may need to be conditions from Oregon Department of Aviation due to the proximity of several airstrips on rural land outside the City. These very reasonable conditions have not deterred any collocation applicant from proceeding with installation. The City needs to retain its authority to impose such conditions.

Finally, the City strongly opposes defining “existing” towers and base stations to include any existing structures even if they do not currently hold wireless communications equipment. The City’s careful land use planning and regulations, not to mention its ongoing efforts to revitalize downtown Cornelius, would be eviscerated if it were forced to approve any eligible application to place facilities on any structure anywhere in the City.

The City supports and encourages deployment of wireless facilities needed to meet the demand for wireless services and has worked hard to balance this goal with its obligation to protect the health, safety and welfare of its residents. The City has achieved this balance by enacting local zoning regulations that have worked well in enabling prompt but thoughtful collocations. The Draft Rules would override these carefully crafted regulations, imposing instead a one-size-fits-all set of regulations that cannot address the unique aspects of the City or any other community even where, as in Cornelius, there have been no issues with collocation. If the Commission does not wish to be the “national zoning board,”¹ the Commission should refrain from adopting rules that remove local authority to the extent contemplated in the Draft Rules, and should provide states and local governments the opportunity to work with local stakeholders, including wireless providers, to craft solutions to any issues that may arise related to collocation.

IMPLEMENTATION OF SECTION 332(c)(7)

Under the Shot Clock Rule, a wireless provider may seek a judicial remedy when a city does not approve or deny a permit application for a collocated site within ninety days or a new site within one hundred fifty days. In the Draft Rules, the Commission seeks comment on whether it should clarify certain aspects of its Shot Clock Rule, including the appropriate remedy in the event of a violation of the Shot Clock Rule.

The City objects to any effort to ignore the plain language of Section 332(c)(7)(B)(v), and the remedy—review by a local court—that the Commission already determined is mandated by the statute.² The determination that a governmental entity has failed to comply with the Shot Clock Rule (or to grant an application governed by Section 6409(a)) will require careful, fact

¹ Draft Rules par. 99.

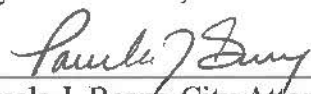
² See 2009 Declaratory Ruling, 24 FCC Rcd at 14009 par. 39.

specific analysis of the application and the actions or inaction of the applicant and the governmental entity. This analysis should be left to local courts, not the imposition of a “deemed granted” remedy by the Commission that requires a local government to issue a permit or land use approval without prior review of the facts related to that application.

CONCLUSION

The City of Cornelius appreciates the Commission’s efforts to better understand the local practices and policies for collocation of wireless facilities. The City requests that the Commission consider these comments, as well as those submitted by all cities, before taking any action that may adversely affect the land use and zoning authority of cities.

Respectfully submitted,
City of Cornelius, OR

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